

SUMTER COUNTY BOARD OF COMMISSIONERS
EXECUTIVE SUMMARY

SUBJECT: Memorandum of Understanding between The Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida Board of Trustees and The Board of County Commissioners of Pasco and Sumter Counties

REQUESTED ACTION: Staff recommends approval

☐ Work Session (Report Only) **DATE OF MEETING:** 11/22/2011
☒ Regular Meeting ☐ Special Meeting

CONTRACT: ☒ N/A Vendor/Entity: _____
Effective Date: 11/22/2011 Termination Date: _____
Managing Division / Dept.: Administrative Services

BUDGET IMPACT:

☒ Annual **FUNDING SOURCE:** _____
☐ Capital **EXPENDITURE ACCOUNT:** _____
☒ N/A

HISTORY/FACTS/ISSUES:

The purpose of the Memorandum of Understanding is to establish, articulate and enhance the collaborative relationship between the Florida Cooperative Extension Service, University of Florida Institute of Food and Agricultural Services (Extension Office) and the Board of County Commissioners (Sumter County). The collaborative arrangement between the State Extension Services and County Governments exists throughout the United States, however the details of the actual agreement is unique to Paso and Sumter Counties. Sumter County and the Extension Office have worked together in the past, however this is the first year a formal Memorandum of Understanding has been established. Hernando and Citrus County have also participated in the past and have chosen not to participate this year.

MEMORANDUM OF UNDERSTANDING
between
The Florida Cooperative Extension Service,
Institute of Food and Agricultural Sciences,
University of Florida Board of Trustees
and
The Board of County Commissioners of
Pasco and Sumter Counties, Florida

The purpose of this Memorandum of Understanding (MOU) is to establish, articulate, and enhance the collaborative relationship between the Florida Cooperative Extension Service, University of Florida - Institute of Food and Agricultural Sciences (hereinafter referred to as "**Extension**") and the Board of County Commissioners of Pasco and Sumter Counties, Florida (hereinafter referred to as "**Counties**"). This agreement states the desire of **Extension** and **Counties** to work cooperatively to enhance the well-being of the citizens of **Counties**, each carrying out their agreed-upon responsibilities.

This collaborative arrangement between state Extension Services and County Governments exists throughout the United States. However, the details of the actual agreements are unique to each county to assure that local needs are properly addressed. This MOU establishes the responsibilities and relationships that exist between **Extension** and **Counties**.

Extension and **Counties** agree to continue the multi-county (MC) extension programming in Pasco and Sumter Counties as long as county budget conditions allow support for the commitments specified in this MOU.

The parties agree as follows:

A. Personnel/Funding Arrangement and Programmatic Responsibilities

1. **Extension** will continue to fund two MC faculty positions. One position, based in Sumter County, is a Commercial Horticulture agent funded 60% by **Extension**. Another position, based in Pasco County, is a Livestock agent funded 70% by **Extension**.
2. **Pasco County** will fund 30% of the MC Livestock agent position that is based in Pasco County. Pasco County will provide additional financial support for this position, including a vehicle, vehicle maintenance, and funds for program support.
3. **Sumter County** will fund 40% of the MC Commercial Horticulture agent position that is based in Sumter County. Sumter County will provide travel support for this position.

B. County Extension Faculty Support by Extension

1. **Extension** will provide leadership for administration and supervision of extension programs and county Extension faculty.
2. **Extension** will develop and administer personnel management for faculty that will provide for:
 - a. The annual review of each faculty member's performance.

- b. Counseling for job improvement where needed.
- c. Periodic county program reviews.

C. Miscellaneous

1. This MOU shall be amended only by written amendments, which must be signed by all parties involved.
2. Any party may terminate this agreement without penalty or cause by giving the other parties at least 60 days written notice of its intent to do so.
3. **Extension** is self-insured for worker's compensation, general liability, and automobile liability through the state of Florida's risk management trust fund. Throughout the term of this MOU, **Extension** will carry insurance that meets the requirements of Florida law applicable to state entities. As of the date of this MOU, such insurance covers university employees and volunteers, as defined in Section 110.502, Florida Statutes.
4. This agreement shall take effect on _____.

Senior Vice President for Agricultural and Natural Resources
University of Florida
Institute of Food and Agricultural Sciences

Date

Dean for Extension and Director,
Florida Cooperative Extension Service

Date

Chairman, Board of County Commissioners
Pasco County

Date

Chairman, Board of County Commissioners
Sumter County

Date

**IMPACT FEE CREDIT AGREEMENT
FOR PROPORTIONATE SHARE CONTRIBUTIONS
FOR DEVELOPMENT OF COUNTY ROAD 470**

THIS AGREEMENT ("Agreement") is made and entered into this 27 day of Sept, 2011, by and between LANDSTONE-WRIGHT, LLC, a Delaware limited liability company, doing business at 12011 San Vicente Blvd., Suite 350, Los Angeles, California 90049 (hereinafter called "Owner/Developer/Owner"). TML OF MARION, LLC, a Florida limited liability company, f/k/a Tony Mendola, LLC, a Florida limited liability company, with a mailing address of P.O. Box 3988, Ocala, FL 34478 (hereinafter called "TML"), and SUMTER COUNTY, a political subdivision of the State of Florida, whose address is 7375 Powell Road, Wildwood, FL 34785 (hereinafter called "County").

RECITALS

WHEREAS, the Owner/Developer and TML are the owners of the Landstone Communities Development of Regional Impact ("DRI") located in the City of Wildwood, Florida (the "City"), as further described by the Development Order for the DRI approved by the City in October 2007, and the Amended and Restated Development Order ("ARDO") for the DRI approved by the City on December 13, 2010, (collectively, the "Development Order"); and

WHEREAS, pursuant to the Development Order, the Owner/Developer, the County, the City, Lake County, and the Florida Department of Transportation ("FDOT") entered into the Landstone Communities Development of Regional Impact Transportation Proportionate Share Agreement for County Road 470 ("Proportionate Share Agreement"), which sets forth the terms and conditions for the design and construction of improvements to County Road 470 ("CR 470") with the cost to be funded by the Owner/Developer, which is incorporated herein by reference; and

WHEREAS, the Proportionate Share Agreement sets forth the timing and extent of contributions to be made by the Owner/Developer toward the improvement of affected transportation facilities, including the improvement of CR 470 from County Road 501 to the Sumter/Lake County line (the "CR 470 Improvements", as such term is defined in the Proportionate Share Agreement); and

WHEREAS, Section 12 of the Proportionate Share Agreement also sets forth Owner/Developer's entitlement to impact fee credits for such contributions, pursuant to Section 380.06(16), Fla. Stat.; and

WHEREAS, it is the intent and understanding of the parties that road impact fee credits or reimbursements shall be sufficient to cover eligible transportation proportionate share costs for the DRI; and

WHEREAS, the County finds that Owner/Developer is entitled to receive impact fee credits and/or cash reimbursement for such contributions and that such contributions are consistent with the County's Comprehensive Plan, are an integral part of and a reasonably necessary accommodation of contemplated Off-Site Improvements to Designated County Roads and excludes Access Improvements, as those terms are defined in Article III of the County's Land Development Code, and the proposed funding and/or construction time schedule is consistent with the County's transportation work schedule; and

WHEREAS, the parties desire to enter into this Agreement to set forth their duties and obligations for such contributions, and the impact fee credits and/or reimbursement to which the Owner/Developer will be entitled.

NOW THEREFORE, accepting the above recitals as true and incorporating them as if stated herein, and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is acknowledged by both parties and the mutual terms, covenants and conditions to be complied with on the part of the parties hereto, the parties do hereby agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing recitals are true and correct and are hereby incorporated by the parties as part of this Agreement as if fully set forth herein.

2. **IMPACT FEE CREDIT AND REIMBURSEMENT**

A. **Dedication of Right Of Way.**

(i) Property Owned by the Owner/Developer. Owner/Developer agrees to convey to the County the right-of-way currently (i.e., as of the date of this Agreement) owned by the Owner/Developer or City of Wildwood and required for the improvement of CR 470, as that term is defined in the Proportionate Share Agreement, without impact fee credit.

(ii) Additional Right-of-Way to be Acquired. To the extent that additional right-of-way is required for construction of the CR 470 Improvements beyond the land described in Section 2.A.(i) above, the County shall be responsible for acquiring such right-of-way, within the jurisdiction of the County. The Owner/Developer shall have no obligations hereunder until all right-of-way necessary for the CR 470 Improvements has been acquired.

B. **Reimbursement for the CR 470 Improvements.**

(i) Amount of Reimbursement. The County agrees that the Owner/Developer shall be entitled to reimbursement in the form of impact fee credits and/or cash as set forth herein based upon the actual cost of designing, permitting and constructing the CR 470 Improvements and any related costs, including, but not limited to, utilities relocation, purchase and installation of traffic signals, construction management and inspection, surveying, soils and material testing, and soil remediation costs; however, in no event shall the Owner/Developer be entitled to any credit and/or reimbursement in excess of 120% of the estimated costs set forth in *Exhibit "A,"* unless and to the extent the Project is competitively bid, in which case the Owner/Developer shall be entitled to impact fee credit and/or reimbursement

in the amount of the actual cost of constructing the Project. The parties agree that Exhibit "A" excludes costs to acquire additional right-of-way, relocate utilities, remediate contaminated soils, and other unknown costs that may be necessary to complete construction of the CR 470 Improvements, and that Owner/Developer shall be reimbursed based on the actual value of such costs incurred by Owner/Developer, if any, regardless of Exhibit "A." It is further agreed that Owner/Developer shall not be entitled to reimbursement/credit in excess of the amount of road impact fees to be generated over the life of the DRI; provided, however, in the event there is a decrease, termination or moratorium on road impact fee rates after the effective date of this Agreement, then Owner/Developer shall be entitled to either, at Owner/Developer's option, cash reimbursement or impact fee credits up to the amount of impact fees that would have been collected over the life of the DRI in the absence of such decrease, termination or moratorium.

(ii) Method of Reimbursement. All road impact fees in the County's impact fee trust account shall be available for cash reimbursement to Owner/Developer in accordance with this Agreement. Except as otherwise provided in Section 2.B.(i.) above, the Owner/Developer shall be reimbursed by the County based upon the percentage of the CR 470 Improvements' work completed by Owner/Developer or Owner/Developer's contractor by delivering to the County a certification by the Owner/Developer's engineer indicating the percentage of work completed through the date of certification, which reimbursement shall be available to the Owner/Developer upon inspection, approval and acceptance of such certification by the County (not to be unreasonably withheld, conditioned or delayed). The Owner/Developer shall have the option of being reimbursed in impact fee credits to the extent that insufficient cash is available to reimburse Owner/Developer in full at the time such application is made, or Owner/Developer may choose to be reimbursed in cash when it becomes available. The amount of reimbursement owing to Owner/Developer shall be based upon the value of the CR 470 Improvements in accordance with the above. The Owner/Developer shall pay road impact fees pursuant to County ordinance except and to the extent that Owner/Developer is entitled to impact fee credits and Owner/Developer elects to utilize such credits. Impact fee credits made available to the Owner/Developer shall be fully transferable and assignable by Owner/Developer in accordance with this Agreement. The Owner/Developer shall keep records which concern or reflect the total cost of the CR 470 Improvements. This information will be available to the County, or its duly authorized agent or representative, for audit, inspection or copying, for a minimum of five (5) years from the termination of this Agreement. If a surety bond, letter of credit or cash is posted by the Owner/Developer pursuant to the Proportionate Share Agreement and the County uses the proceeds of the surety bond, letter of credit or cash to construct the CR 470 Improvements, then the Owner/Developer shall be entitled to road impact fee credits or reimbursements as described above. However, it is not the County's intent to utilize the proceeds of the surety bond, letter of credit or cash for construction but used simply as a financial guarantee of completion of the CR 470 Improvements by the Owner/Developer.

C. Assignment of Impact Fee Credits by the Owner/Developer. Any impact fee credits granted to Owner/Developer shall be freely assignable by the Owner/Developer, its successors and/or assigns, without limitation on the number of such credits that may be assigned and transferred from one entity to the next or the number of times such credits may be transferred. Any such assignment of impact fee credits shall be evidenced in writing and signed by the Assignee or holder of the impact fee credits and a copy of such assignment shall be provided to the County.

D. **Annual Review and Audit.** The County shall conduct an annual review and audit of performance under this Agreement to determine whether or not there has been demonstrated good faith compliance with the terms of this Agreement and to report the credit applied toward payment of road impact fees and the balance of available and unused credit. If the Board finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms of this Agreement, this Agreement may be revoked or modified by the County. Prior to taking any such action, the County agrees to give the Owner/Developer written notice with reasonable time in which to cure any alleged failure.

3. **COMMUNITY DEVELOPMENT DISTRICT.** Any or all of Owner/Developer's funding and/or construction-related obligations set forth in this Agreement may be performed by a community development district created for the DRI pursuant to Chapter 190, Fla. Stat. In addition, and without limiting the foregoing, the Owner/Developer may perform any financial and/or construction-related obligation herein and be reimbursed by a community development district created for the DRI pursuant to Chapter 190, Florida Statutes. To the extent that any such contribution or construction-related activity is paid for by or (in the case of advancing impact fee credits) is secured by a community development district, then impact fee credits and/or reimbursement, as applicable, shall be granted in the name of such community development district and shall be subject to the same terms and conditions set forth herein as if they were granted to Owner/Developer.

4. **FUTURE ESTABLISHMENT OF MUNICIPAL SERVICE TAXING UNIT OR MUNICIPAL SERVICE BENEFIT UNIT.** If at the request of the City of Wildwood ("City") a Municipal Service Taxing Unit (MSTU) or Municipal Service Benefit Unit (MSBU), pursuant to Florida Statutes and the Interlocal Service Boundary Agreement, dated April 29, 2009, as amended, ("ISBA") between the City and County, is established to fund the CR 470 Improvements, then the Owner/Developer may enter into a separate agreement with the City, at the City's full discretion and option, to obtain reimbursement for expenses related to the CR 470 Improvements not reimbursed or credited through this Agreement.

5. **NOTICES.** Any notice or demand that must or may be given or made in connection with this Agreement must be in writing and delivered by personal delivery or mailed by certified or registered mail, return receipt requested, and addressed to the parties as follows:

COUNTY:

Sumter County
Attn: Bradley Arnold,
County Administrator
7375 Powell Road
Wildwood, FL 34785

OWNER/DEVELOPER:

Landstone-Wright, LLC
Attn: Albert Z. Praw
12011 San Vicente Blvd., Suite 350
Los Angeles, CA 90049

Copy to:

George Angeliadis, Esq.
The Hogan Law Firm
Post Office Box 485
Brooksville, Florida 34605

Copy to:

Cecelia Bonifay, Esq.
Akerman Senterfitt
420 South Orange Avenue, 12th Floor
Orlando, FL 32801

TML:
TML of Marion, LLC
Tony Mendola, LLC
Attn: Albert Peek
PO Box 3988
Ocala, FL 34478

Copy to:
W. James Gooding III, Esq.
Gilligan, King, Gooding & Gifford, P.A.
1531 SE 36th Ave.
Ocala, FL 34471

Copy to:
Hearthstone
Hearthstone
Attn: Tracy Carver, Esq.
General Counsel
300 Drake's Landing Rd, Suite 269
Greenbrae, CA 94904

Such addresses may be changed by notice pursuant to this paragraph, but notice of change of addresses is effective only upon receipt.

6. **Concurrency and Related Fees.** In the event the County adopts a transportation concurrency fee, a "mobility fee," or an equivalent transportation fee, in lieu of, or in addition to, road impact fees, Owner/Developer shall be entitled to receive credits against, and reimbursement from, such fee to the same extent as it is entitled to such credits against, or reimbursement from, road impact fees.

7. **Successors.** This Agreement shall bind and inure to the benefit of the parties, their successors in interest and assigns. Other than the ARDO and the Proportionate Share Agreement, no prior or present agreements or representations shall be binding on the parties hereto unless included in this Agreement. No subsequent agreement shall be valid or binding upon the parties unless in writing and executed by the party immediately bound by it. In any litigation arising out of this Agreement, each party shall be responsible for its attorney's fees and costs.

8. **Force Majeure.** In the event that the performance of this Agreement by either party is prevented or interrupted in consequence of any cause beyond the control of either party, including but not limited to Acts of God or of the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, sinkhole or other casualty or disaster, governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, then such party shall not be liable for damages to the other party as a result of such non-performance. Notwithstanding the above, both parties agree to take no action that would prevent the intended operation of this Agreement.

9. Amendment. This Agreement may be amended by mutual written agreement of the parties where such amendment is duly executed with the same formalities as this Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year above first written.

ATTEST:



Gloria Hayward, Clerk of the Court

Approved as to Form
and Legal Sufficiency

Sumter County Attorney

BOARD OF COUNTY COMMISSIONERS
SUMTER COUNTY, FLORIDA

Don Burgess, Chairman

ATTEST:

LANDSTONE-WRIGHT, LLC, a Delaware
limited liability company

By: Hearthstone Path of Growth Fund LLC,
a Delaware limited liability company, Member

By: Hearthstone Professionals XII, LP, a
California limited partnership, Managing
Member

By: Hearthstone, Inc., a California
corporation, General Partner

By: Charles Schetter, President

By: Landstone Communities, LLC, a Delaware
limited liability company, Member

By: Albert Z. Praw, Chief Executive Officer

ATTEST:

TML OF MARION, LLC, a Florida limited
liability company

By: _____

By: _____

Name: _____

As Its: _____

(The remainder of this page is intentionally left blank.)

EXHIBIT "A"

<u>Roadway</u>	<u>Segment</u>	<u>Improvement</u>
C-470	CR 501 to County Line	Widen to 4 lanes
Construction	\$13,692,171	
ROW	\$2,202,296	
Engineering	\$2,053,826	
CEI	\$1,369,217	
Wetland	\$21,451	
Total Cost	\$19,338,961	

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